Supreme Court of the United States

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE L'ETABLISSEMENT THERMAL DE VICHY,
Petitioners,
—vs.—
SARATOGA VICHY SPRING COMPANY.

OCTOBER TERM, 1901.
No. 677

Petition for Writ of Certiorari requiring the Circuit Court of Appeals for the 2nd Circuit to certify to the Supreme Court of the United States the above entitled case for its review and determination.

CHARLES BULKLEY HUBBELL,
Attorney and of Counsel for Petitioners.

Archibald Hopkins
Of Counsel

Supreme Court of the United States.

La Republique Francaise and La Compagnie Fermiere de L'Etablissement Thermal de Vichy, Petitioners, vs. Saratoga Vichy Spring Company.	October Term, 1901.

NOTICE OF MOTION.

To Saratoga Vichy Spring Company, the above-named Defendant:

Please take notice that on 19th May ~~January~~, 1902, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, a motion for a writ of *certiorari*, of which motion a copy is annexed, will be submitted to the Supreme Court of the United States at the City of Washington, D. C., for the decision of the Court thereon.

In support of said motion a petition will also be presented to the Court. A copy of the petition is herewith served upon you.

Respectfully,
Charles Bulkley Hubbell,
Attorney and of Counsel for Petitioners.

New York,

Due service of the foregoing notice of motion in the above cause is hereby admitted this day of , 1902.

Defendant,

By

SUPREME COURT,

OF THE UNITED STATES.

La Republique Francaise and La Compagnie Fermiere De l'Etablissement Thermal de Vichy, Petitioners.	October Term, 1901.
vs.	
Saratoga Vichy Spring Company, Defendant.	

MOTION.

Now come La Republique Francaise and La Compagnie Fermiere de l'Etablissement Thermal de Vichy, by Charles Bulkley Hubbell, their attorney and counsel, and move this Honorable Court for a writ of *certiorari* directed to the Honorable the Judges of the United States Circuit Court of Appeals within and for the Second Judicial Circuit, commanding them forthwith to certify and return to this Court all proceedings by them had in the suit lately before them wherein these petitioners were appellants and said Saratoga Vichy Spring Company was appellee.

The matter involved herein relates to the question of the rights of the petitioners to be protected against the use of the name "Vichy" to denote a water not drawn from the springs at Vichy, owned by the petitioner La Republique Francaise and now leased to the petitioner La Compagnie Fermiere de l'Etablissement Thermal de Vichy. Your petitioners' rights have been held curtailed by the United States Circuit Court of Appeals for the Second Judicial Circuit, which has granted your petitioners limited relief and denied the

607

prayer of your petitioners' bill of complaint in the present case that the defendant be restrained from making use of the word "Vichy" to denote a water not drawn from your petitioners' springs at Vichy.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE L'ETABLISSEMENT THERMAL DE VICHY,
Petitioners.
By CHARLES BULKLEY HUBBELL,
Their Attorney and Counsel.

Due service of the foregoing motion is hereby admitted this day of

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1901.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE L'ETABLISSEMENT THERMAL DE VICHY,
Complainants and Appellants,

AGAINST

SARATOGA VICHY SPRING COMPANY,
Defendant and Appellee.

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

The Petition of La Republique Francaise and La Compagnie Fermiere de l'Etablissement Thermal de Vichy, respectfully shows:

FIRST. That your petitioner, La Republique Francaise, is an independent State and one of the sovereign powers of the earth, having its main territory and chief seat of authority in that part of the continent of Europe designated and known as "France." Your petitioner, La Compagnie Fermiere de l'Etablissement Thermal de Vichy, is a corporation duly organized and existing under and by virtue of the laws of the said La Republique Francaise. The defendant is a corporation organized and existing under the laws of the State of New York and a citizen of said State.

SECOND. That the value of the matter in dispute in the above-entitled cause, as appears by the bill of complaint therein, exclusive of interest and costs, exceeds the sum of two thousand dollars.

THIRD. That this suit was brought to restrain the use by the defendant of the word "Vichy" as the name or as part of the name or to denote a water not drawn from the springs of Vichy, which are owned by your petitioner, La Republique Francaise, and now leased to your petitioner, La Compagnie Fermiere de l'Etablissement Thermal de Vichy.

FOURTH. That the undisputed facts relating to the use by your petitioners of the word "Vichy" may be summarized as follows:

There is in France a certain commune or town namedVichy, which has been known throughout the civilized world for a long time, and as being renowned for the waters obtained from the numerous mineral springs situated in said commune, the waters of which springs have been for many years universally called and known as "Vichy" waters.

Since the treason of the Constable of Bourbon, in the year 1531, these springs have been owned by the State of France, which, under the law of France, is entitled to the exclusive use and enjoyment of the springs referred to, including the right to use the name "Vichy" in connection therewith.

Your petitioner, La Compagnie Fermiere de l'Etablissement Thermal de Vichy, is the sole lessee of said springs for a term of years, by whom the waters of the springs have been for many years bottled, offered and sold all over the civilized world.

In 1853 the waters were exported to this country under the name of "Vichy," and in 1893 the shipments to this country were about 300,000 bottles. In 1896 the entire shipments of "Vichy" amounted to nearly 10,000,000 bottles.

FIFTH. That the facts in regard to the use of the word "Vichy" by the defendant are shortly as follows:

In 1872 a spring was discovered in the township of Saratoga Springs, in the State of New York, the water of which was bottled and sold in 1873, and thereafter until 1876, by the owners of the spring, when the defendant, under the name of The Saratoga Vichy Spring Company, became the owner, and has since sold the water, using on the bottles, circulars and in its advertisements the words "Saratoga Vichy" in various forms.

Until 1896 the words "Saratoga" and "Vichy" upon the labels were substantially in the same style and size of type. In 1896 a neck label was adopted on which the word "Vichy" was displayed very prominently, and the word "Saratoga" in far less conspicuous type.

SIXTH. That the facts in regard to the use of the word "Vichy" by others in the United States which were considered by the Circuit Court and the Circuit Court of Appeals may be summarized as follows:

Factitious waters have been put upon the market in this country under the name of "Vichy" since 1862. These waters have differed widely from each other in composition, some approaching in some degree the composition of the genuine "Vichy," others being no more than ordinary water with a slight trace of chloride of sodium. Upon these waters the word "Vichy" has been used recklessly and adventurously and without any certain or definite meaning, and the word "Vichy," except as indicating that the water sold under it is drawn from the French wells, has meant nothing.

The word "Vichy" has never lost its original and true meaning, but to-day, as always, in the words of the Circuit Court of Appeals, 'Vichy' properly signifies water from the French wells."

In January, 1892, suit was commenced by the petitioners against one Schultz, a conspicuous example of the somewhat limited class who have bottled their factitious waters and represented them to be "Vichy"

and sold them as such. Until said suit was commenced against Schultz his water, and all the other factitious waters referred to, had been unblushingly labeled and represented to be "Vichy," and nothing else. After the suit was commenced Schultz changed his label by adding the word "artificial."

Schultz died before the hearing of said suit, and the case was continued against his executrix, and was not finally disposed of until after the petitioners instituted this suit against this defendant. The opinions of the Circuit Court and the Circuit Court of Appeals in the said suit against Schultz are reported in 94 Fed. Rep., 500, and 102 Fed. Rep., 154. A determination of your petitioners' rights in said suit against Schultz, except in so far as the right to recover profits was concerned, was precluded by the death of Schultz *pendente lite*.

There have been other uses of the word "Vichy" in the United States which were not referred to by the Court below, and which are, your petitioners conceive, of no possible consequence, such as the haphazard use of the word by retail druggists who draw their uncertain waters from soda fountains and the like. All such uses have been different in kind from the use of the word by your petitioners and the defendant, and do not in any way affect the sale of your petitioners' "Vichy" in the markets of the United States.

SEVENTH. That a copy of the opinion of the Circuit Court is hereto attached and marked "Exhibit A," and a copy of the opinion of the Circuit Court of Appeals is likewise attached and marked "Exhibit B," and a copy of the dissenting opinion of his Honor, Judge WALLACE, in the Circuit Court of Appeals is also attached and marked "Exhibit C."

EIGHTH. That the Circuit Court held that the case was controlled by a decision of his Honor, Judge WALLACE, in said suit brought by your petitioners against Schultz (which opinion proceeded solely upon

the ground that by reason of laches the complainants were without remedy), and dismissed the bill.

NINTH. That the Circuit Court of Appeals held that the neck label displaying the word "Vichy" more prominently than the word "Saratoga" was "in fact an untruthful label employed for an objectionable purpose," but decided that the petitioners' relief should be limited to compelling the defendant to print the word "Saratoga" "as plainly and prominently" as the word "Vichy."

TENTH. That the decision of the Circuit Court of Appeals, in so far as it proceeds upon the ground that one may use the name which denotes the goods of another provided the name be qualified by the addition of another name, is in direct conflict with the decisions in many cases decided by the Courts of Appeal of other Circuits (*e. g.* "London" to qualify "Royal" in Raymond vs. Royal Baking Powder Co., 85 Fed., 231, decided by the Court of Appeals for the Seventh Circuit, *cf.* Plant Co. vs. May Co., 105 Fed., 375, 379, decided by the Court of Appeals for the Sixth Circuit), and is in conflict with the reasoning of this Honorable Court in the case of Saxlehner vs. Eisner & Mendelson Co. (179 U. S., 19, 40, 41), which came up from the said Second Circuit, wherein it was pointed out that the addition of a distinguishing feature (in that instance an additional label) by the defendant to the appropriated *indicia* of the complainant's goods was not the relief to which the complainant was entitled, but that the defendant should be compelled to cease to use that which denoted origin from the complainant.

ELEVENTH. That in so far as the conclusion reached proceeds upon the ground that your petitioners' rights have been curtailed by the delay in instituting suit, both the United States Circuit Court and the United

States Circuit Court of Appeals committed grievous error in overlooking or disregarding the fact that the principal complainant in the case, La Republique Francaise, being a sovereign power, there could be no imputation of laches, and that consequently the right of the complainant to restrain the use of the name "Vichy" as a designation or part of a designation of water not drawn from the Vichy Springs is not affected by the delay in bringing suit.

TWELFTH. That in so far as the decisions in the Circuit Court and the Circuit Court of Appeals proceed upon the ground that your petitioners' rights have been curtailed by their delay in bringing suit, the said decision is in conflict with the rule announced by the United States Circuit Court of Appeals for the Third Circuit in the case of Actiengsellschaft, &c., vs. Amberg (109 Fed., 151), wherein the doctrine is announced that delay in bringing suit in cases of this character does not impair the right to relief against further injury unless there is also an abandonment. The decision of the Court of Appeals for the Second Circuit, and the decision of the Court of Appeals for the Third Circuit were both rendered after the decision of this Honorable Court in the case of Saxlehner vs. Eisner & Mendelson Co. (179 U. S., 19), and the rule laid down by this Honorable Court has been understood differently by the said Circuit Courts of Appeals, which said rule is one the application of which is frequently demanded, and upon which there should be no doubt or difference of opinion.

THIRTEENTH. That both the Circuit Court and the Circuit Court of Appeals committed grievous error in that both overlooked or disregarded the fact that the effect of permitting the use of the word "Vichy" upon waters not drawn from the Vichy Springs is to destroy your petitioners' trade in "Vichy" in the United States, because the waters of the defendant (paying

nothing in duties or for transportation) is sold as "Vichy," and satisfies the demand for "Vichy" (which demand is the good-will and property of your petitioners), and necessarily stands in the way of and precludes the importation and sale of the genuine "Vichy" water in the markets of the United States, which has long been a source of profit to your petitioners and a benefit and advantage to the public.

FOURTEENTH. That the decision of the Circuit Court of Appeals, your petitioners respectfully submit is subversive of the rights guaranteed to your petitioners by the treaty between the United States of America and your petitioner, La Republique Francaise, because by Article 8 of the treaty of March 20, 1887, your petitioners' "commercial name," "Vichy," was guaranteed protection in the markets of the United States, and that protection has not been afforded your petitioners; but, on the contrary, your petitioners' name "Vichy" in the markets of the United States has been in effect taken from them and handed over to the defendant and the class it represents.

FIFTEENTH. And your petitioners very respectfully represent that the rights for which they very earnestly contended have not been adjudicated; but that, on the contrary, their contentions have been disregarded, with the result that the value of the land owned by your petitioner La Republique Francaise has been impaired by permitting the waters of others to be branded and sold as "Vichy," whereby the product of your petitioners' land is by false and fraudulent representations kept out of the markets of the United States.

SIXTEENTH. That said decree of said Circuit Court of Appeals is final between the parties unless this Honorable Court shall of its own motion direct the bringing up for review of said cause.

Wherefore, your petitioners respectfully pray that a writ *certiorari* may be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Second Circuit, commanding the said Court to certify and send to this Honorable Court on a day certain to be therein designated a full and complete transcript of the record of all proceedings of the said Circuit Court of Appeals in the said cause therein entitled "La Republique Francaise and La Compagnie Fermiere de l'Etablissement Thermal de Vichy, Complainants and Appellants, v. The Saratoga Vichy Spring Company, Defendant and Appellee," No. 29, to the end that the case may be reviewed and determined by this Honorable Court as provided in Section 6 of the Act of Congress entitled "An Act to establish Circuit Courts of Appeal, and to define and regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes," approved March 3, 1891; and that your petitioners may have such other and further relief in the premises as to this Court may seem appropriate and in conformity with said act; and that the said judgment of the said Circuit Court of Appeals for the Second Circuit in the said cause, in so far as it does not direct that the defendant be restrained from making use of the word "Vichy" as the name or designation, or as part of the name or designation, of water not drawn from your petitioners' spring, may be reversed by this Honorable Court.

And your petitioners will ever pray, &c.

Archibald Hopkins

Chas Bulkley Hubbell

Counsel for Petitioners

Exhibit A.

UNITED STATES CIRCUIT COURT,

NORTHERN DISTRICT OF NEW YORK.

LA REPUBLIQUE FRANÇAISE ET AL.

v.

SARATOGA VICHY SPRING COMPANY.

FINAL HEARING IN EQUITY.

ROWLAND COX, for the Complainants.
EDWARD T. BRACKETT and WALTER P. BUTLER, for the Defendant.

COXE, J.:

It is thought that this cause is ruled by the decision in La Republique Française v. Schultz, 94 Fed. Rep., 500, recently affirmed. Of course the facts are not alike. They never are. The salient features are, however, almost identical. The principles upon which the decision in the Schultz case rests are involved in the case at bar, and I see no way to avoid their application. The attempt to distinguish, though ingenious, is founded upon considerations which are too vague and unsubstantial for practical application. They do not go to the merits of the controversy. They make no breach in the principal line of defense. It would be inequitable to punish the defendant with an injunction and an accounting after exonerating the defendants in the former case. Indeed, the defense here is, in some respects, stronger than in the Schultz case.

The defendant's water has been known for twenty-six years as Saratoga Vichy, and the record shows that there has never been an attempt to palm it off on innocent buyers as the imported article. The defendant has sold it upon its merits as a natural Saratoga water. The two are different in appearance, taste and ingredients. The defendant's is a sparkling water, and for several years has been sold under a label on which the word "Saratoga" is as prominently displayed as the word "Vichy." It is true that there is a small neck label attached to the bottle on which the name "Vichy" is the more prominent, but, in view of the many other distinguishing characteristics, it seems inconceivable that any one of ordinary perception can be induced to buy the defendant's water, supposing it to be the imported Vichy. An individual stupid enough to be deceived in such circumstances is beyond the aid of a court of equity. In his case a writ *de lunatico* is a more appropriate remedy than a writ of injunction.

The bill is dismissed.

[ENDORSED:] Decision, COXE, J. Filed Feby. 19, 1900.

Exhibit B.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE L'ETABLISSEMENT THERMAL DE VICHY,

vs.

THE SARATOGA VICHY SPRING COMPANY.

SHIPMAN, C. J.

This is an appeal from a decree of the Circuit Court for the Northern District of New York, which dismissed the complainants' bill in equity to restrain the use of the word "Vichy" upon the defendant's bottles containing the water of the spring known as the Saratoga Vichy Spring and for other relief, upon the ground that the defendant's labels and advertisements improperly and unfairly misled purchasers to believe that they were buying the complainants' article and unfairly interfered with their exclusive right to the use of the word "Vichy."

The facts in regard to the title of the complainants to the spring at Vichy, and to the labels upon the bottles in which it is exported to this country and the extent of its business in the United States were stated in the opinion of this Court in the case of the same complainants against Schultz (102 Fed. Rep., 154), and are as follows:

"The existence in the commune of Vichy, in France of numerous mineral springs which have long produced water of high medicinal value is well known. The water began to be sold as early as 1716, and became popularly known as Vichy or Vichy water. The Republic of France is the owner of nearly all these springs, and by the terms of acts passed in 1853 and 1864, La Compagnie Fermiere de L'Etablissement Thermal de Vichy, hereinafter called the company, obtained the concession of the springs owned by the State for terms of years which have not yet expired.

"This Company bottles at Vichy and sells in France and in other countries the waters of which it is the lessee, under labels which are its property and of which the characteristic marks consists in the name Vichy and the name of the particular spring, and a wood-cut vignette showing the "Thermal Establishment." In 1853, it began to export its water to this country and in 1893, its shipments to this country were about 300,000 bottles. In 1896, its entire shipments amounted to nearly 10,000,000 bottles. The natural waters are exported in their original condition and are not artificially charged with gas.

The township of Saratoga Springs has long been known as abundant in mineral springs, the waters of which are distinguished by different names, and in March, 1872, the geyser or spouting spring of the defendant was discovered in that town. The water is alkaline, is regarded by medical men as a valuable mineral water and has been recommended extensively by the defendant as having a wonderful similarity to the Vichy waters of France. The water was bottled and sold in 1873 and thereafter until 1876 by the owners of the spring, when the defendant, under the name of the Saratoga Vichy Spring Company became the owner and has since sold the water extensively under the name of Saratoga Vichy Water, or Natural Saratoga Vichy Water. The bottles, circular and ad-

vertisements have invariably used the words Saratoga Vichy. The water is highly charged with natural carbonic-acid gas and is bottled under a high pressure of that gas. The water of the complainants is a still water. It was stipulated that the testimony in the Schultz case could be used in this case by either party and from that testimony it appears that the manufacture of artificial sparkling water compounded after the analysis of Vichy water has been extensively carried on in this country since 1862 under representations of its artificial character, that it was understood by intelligent purchasers to be artificial and, as one was a sparkling and the other a still water, there was no confusion in the public mind as to the identity of the two articles and the manufactured Vichy became an article distinct from the still water of the natural spring.

The bottles and lables of the complainants and the defendants have been very unlike each other in general appearance and character and one could not be mistaken for the other by any person who had an acquaintance with either. Until 1896, the words Saratoga and Vichy upon the labels were substantially in the same style and size of type and the name Saratoga was as prominently displayed as the name Vichy. In 1896, a neck-label of white paper, printed in black and red letters, was added by the defendant to its other labels. The word Vichy is very prominently displayed, and the Saratoga over it is in far less conspicuous type, so that if the bottle stands upon a table or a shelf the word Vichy is the one which is the marked and prominent object in sight.

Like the manufactured water, the Saratoga water is understood by consumers to be sparkling, and to have, in that respect, a character distinct from the still, natural Vichy.

It does not appear that the complainants expressed dissatisfaction with the acts of the defendant until the time of the commencement of this suit.

So long as the defendant confined itself rigidly to the universally conspicuous declaration upon its labels and bottles and in its advertisements that the contents of the bottles were Saratoga Vichy Water, it did not violate the rights of the complainants, because Saratoga Vichy and the Vichy of France are well understood to be different articles, in that one is a sparkling and the other is a still water. They are used differently, and, when used, no person could mistake one for the other. In this respect, both the natural water of Saratoga and the manufactured water of Schultz resemble each other, and, accordingly, our decision in the Schultz case intimated very strongly that, after the alteration by Schultz of his labels, subsequent to the commencement of the suit, so as to assert that his article was artificial Vichy, manufactured by himself, he was not open to the charge of unfair competition. Until 1896 the defendant's bottles uniformly and without disguise declared that the contents were Saratoga Vichy Water, and thus proclaimed the difference between the two well-known articles; but, in the label of 1896, the defendant unfairly disregarded the previously acquired right of the complainants to the use of the word when applied to the product of their wells. The effect of the label is to represent to the purchaser not accustomed to the article that it is Vichy water and "Vichy" properly signifies water from the French wells. It is, in fact, an untruthful label employed for an objectionable purpose. It is true that a mere geographical name, without attending facts, which have caused the name to become significant of a particular manufacture and to identify the manufacture as the product of a particular person, is not the subject of a trade-mark. The distinction, however, between mere names of a locality and the secondary signification of names which identify an article with its manufacturer or producer, or which tell the public that an article so produced is of singular excellence, with the result that the use of the name

by a non-resident producer is unfair to the competitor and fraudulent to the public, has been long recognized (Elgin Watch Co. vs. Illinois Watch Co., 179 U. S., 665). The decision in Canal Co. vs. Clark, 13 Wall., 311, referred only to a denial of the exclusive right of a resident of a district of the country to the application of its name to a well-known article of commerce, in that instance coal, so "as to prevent others inhabiting the district or dealing in similar articles coming from the district from truthfully using the same designation." The decisions are abundant that, where the name of a district of country has been used by an inhabitant of that district to identify his product, and has become significant of the success and a declaration of the superiority of the product, a non-resident manufacturer cannot properly use the name to deceive the public and fraudulently obtain the good-will which belongs to his competitor. Thus a watchmaker of some other town than Waltham cannot properly call the articles which he produces "Waltham Watches." The opinion in Pillsbury-Washburn Flour Mills Co. vs. Eagle, 86 Fed. Rep., 608, which exhaustively collates the authorities upon the subject, among which Thompson vs. Montgomery, 41 Ch. Div., 35, and Wotherspoon vs. Currie, L. R., 5 H. L., 508, are important, states as the result of the decisions the distinction which has been referred to as follows :

"The distinction, both in the English and American cases, is between those where a geographical name has been adopted and claimed as a trade-mark proper and those where, as in the case at bar, it has been adopted, first, as merely indicating the place of manufacture, and afterwards, in course of time, has become a well-known sign and synonym for superior excellence. In the latter cases, persons residing at other places will not be permitted to use the geographical name so adopted as a brand or label for similar goods for the mere purpose by fraud and false representation of appropriating the good-will and

business which long-continued industry and skill and a generous use of capital has rightfully built up."

The label of 1896 comes within the spirit of this prohibition, for it untruthfully tends to mislead the unwary purchaser and to gain the reputation which the Vichy natural springs have acquired.

The defendant should be enjoined against the use of this neck label or of any other label in which the place of the origin of its water is not as plainly and prominently made known as the fact that it is named Vichy.

Let the decree of the Circuit Court be reversed, with costs of this court, and the case be remanded to the Circuit Court, with instructions to enter a decree in accordance with the principles herein expressed, and for an accounting of damages from the use of neck label of 1896, with costs of the Circuit Court.

CHARLES BULKLEY HUBBELL and ARCHIBALD COX, for the complainants. WALTER P. BUTLER, for the defendant.

Exhibit C.

UNITED STATES CIRCUIT COURT OF APPEALS,

SECOND CIRCUIT.

LA REPUBLIQUE FRANCAISE ET AL.

vs.

SARATOGA VICHY SPRING COMPANY.

WALLACE, Circuit Judge:

I dissent from the opinion of the Court because, as I view the facts, the case does not disclose any attempt on the part of the defendant to represent its mineral water to purchasers as the French Vichy. In its advertisements the defendant has studiously presented its water to the public as a product of its spring at Saratoga, and the labels and dress upon its bottles not only has never borne any similitude to those upon the bottles of the complainants, but have always distinguished it as Saratoga Vichy Water so plainly that misapprehension by purchasers was impossible. The word "Saratoga" is the valuable part of the descriptive name, because the reputed therapeutic virtues of Saratoga waters have rendered them the most popular mineral waters known in the markets where the defendant's water is offered for sale, and no sane man, having the right to sell his mineral water as a Saratoga water, would be tempted to suppress that part of the name or sell it by any name which would denote a different origin. All the Saratoga waters are bottled and sold by descriptive names, such as "Saratoga Congress

Water," "Saratoga Hathorn Water," etc., and the defendant, in naming its water Saratoga Vichy, did so merely to distinguish it from the other Saratoga waters, and selected Vichy as its distinctive name because its alkalinity assimilated it more nearly to the French Vichy. The label which has met with animadversation in the opinion of the Court is one used on the neck of the bottles. It is a fancy label, having a white background, and printed upon it in red and black letters are the words "Saratoga Vichy." The word "Saratoga" is above the word "Vichy," but included between its extended V and Y. It is true that it is in smaller letters, but the letters are an eighth of an inch in height and breadth. Although not so conspicuous as the word "Vichy," it is so prominent that it is almost inconceivable that it would not be observed across a counter. If this were the only label on the bottle, there would be color for the theory that it might mislead casual purchasers; but just below it is another label, covering nearly half the surface of the bottle, upon which is printed, in letters three-fourths of an inch in length and breadth, the words "Saratoga Vichy Water."

The decree which is authorized by the opinion will not be of the slightest practical benefit to the complainants, and will have no effect except to subject the defendant to expense, for I cannot believe that any person ever has been misled, or ever can be misled, by the use of the neck label, as the defendant has always used it, in conjunction with the body label.

I agree with the conclusion of the court below that the bill should be dismissed.